

# **UNEP GLOBAL JUDGES PROGRAMME**

**APPLICATION OF ENVIRONMENTAL LAW BY NATIONAL  
COURTS AND TRIBUNALS**

## **PRESENTATION 4**

# **SCOPE AND CONTENT OF SUBSTANTIVE ENVIRONMENTAL LAW**

# OUTLINE OF PRESENTATION

WHAT IS “ENVIRONMENT”

WHAT IS “ENVIRONMENTAL LAW”

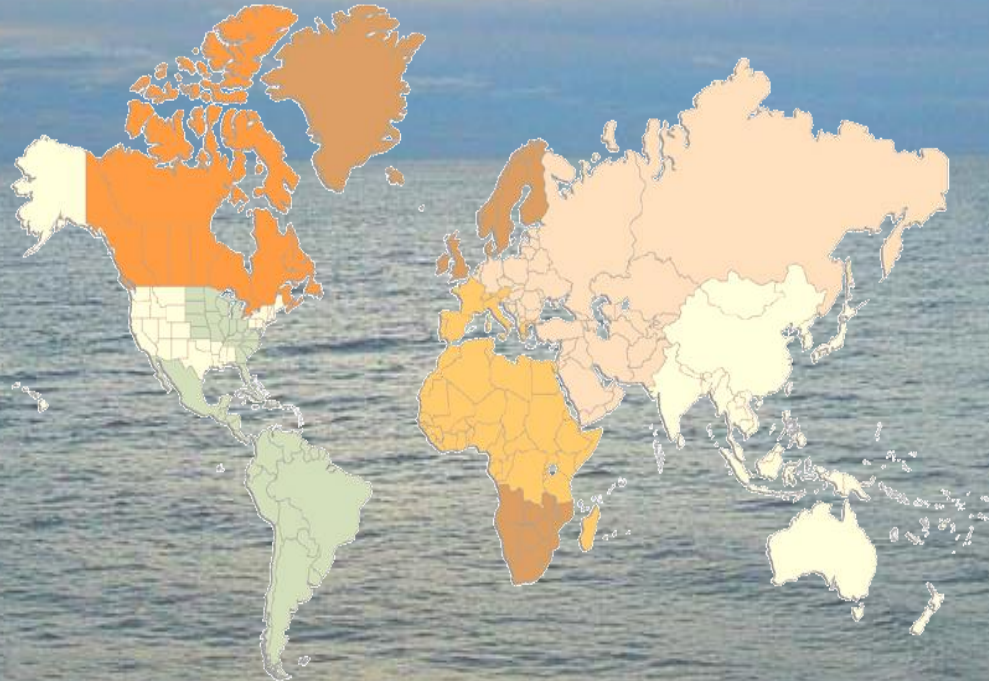
TRANS-DISCIPLINARY NATURE

DIFFERENT LEGAL SYSTEMS

SOURCES OF ENVIRONMENTAL LAW

# STATUTORY DEFINITIONS OF ENVIRONMENT

Definitions of “environment” drawn from national environmental legislation of several countries were presented in the Introduction.  
(Presentation 1)



# STATUTORY DEFINITIONS OF ENVIRONMENT

The general definition of “ environment” includes:

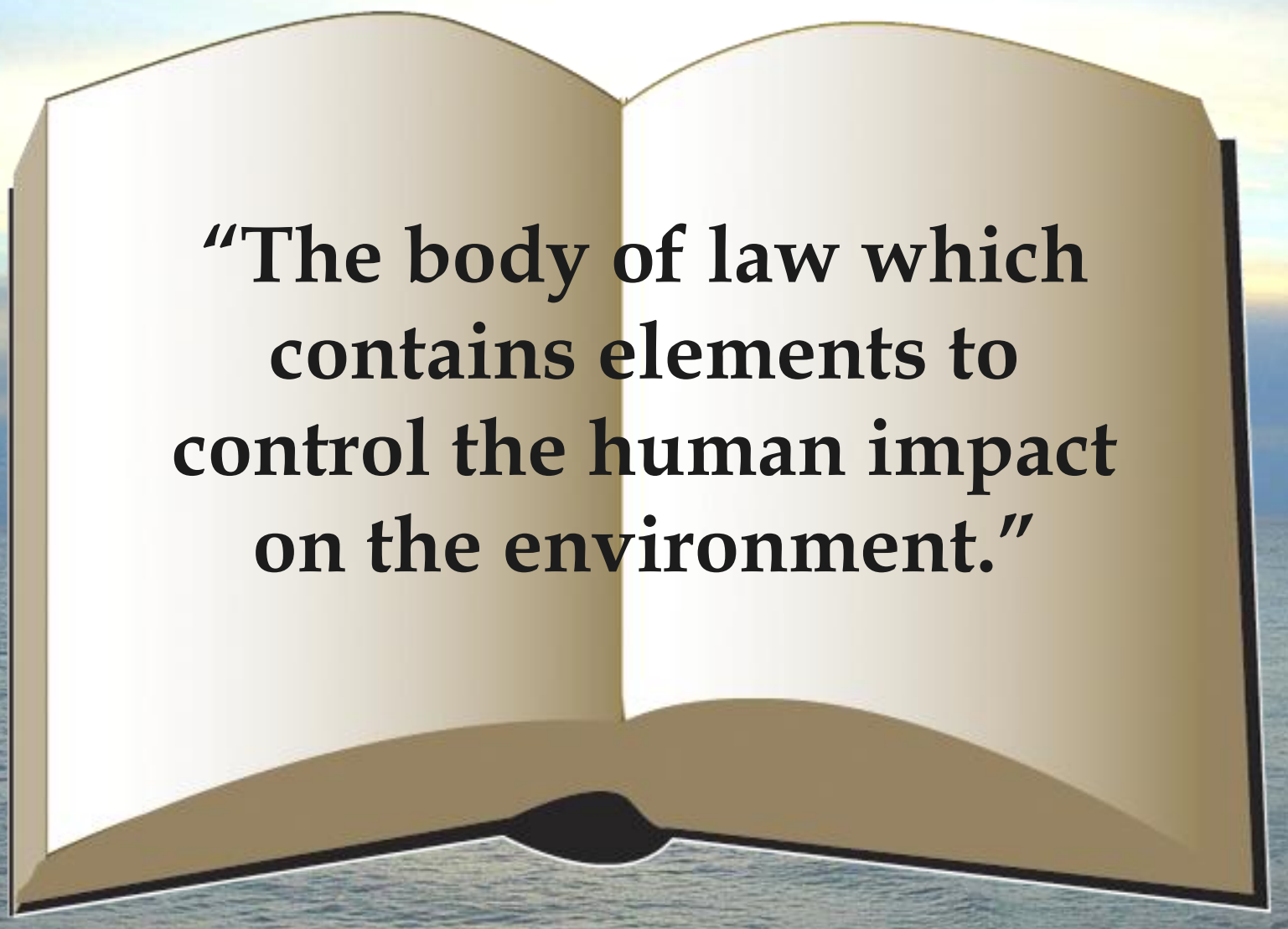
The entire range of living and non living factors that influence life on the earth and their interactions.

This would include:

- **Living resources** including humans, animals, plants and micro-organisms.

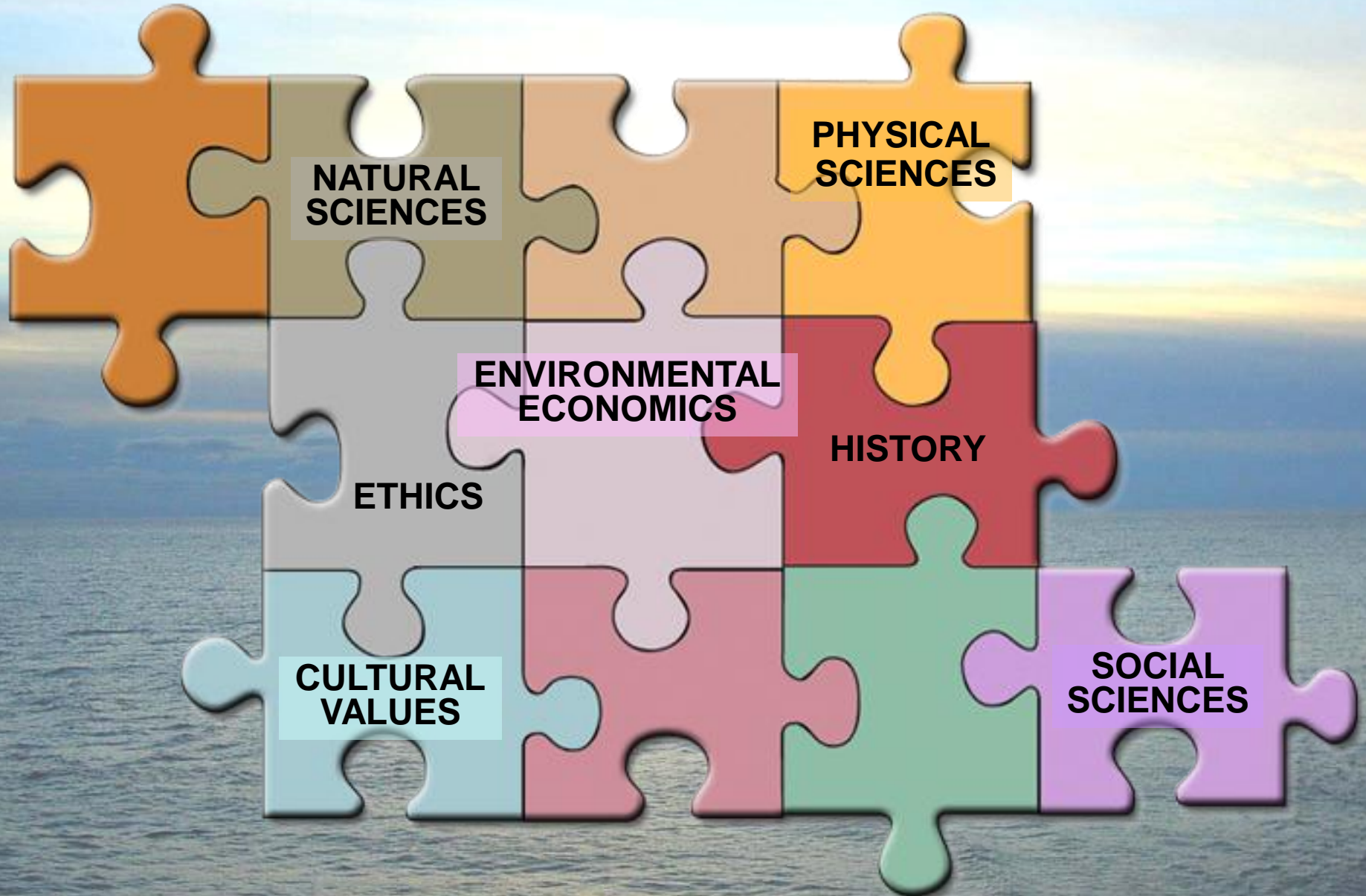
- **Non-living resources** i.e.
  - physical life support systems of the planet such as the geography, hydrology, atmosphere, matter, and energy
  - historical, cultural, social and aesthetic components including the built environment.

# WHAT IS ENVIRONMENTAL LAW

An open book is centered in the image, with its pages slightly curved. The book is white with a dark brown cover and spine. The background is a scenic view of a blue ocean under a blue sky with light clouds, suggesting a sunset or sunrise. The text is printed in a bold, black, serif font on the right page of the book.

**“The body of law which contains elements to control the human impact on the environment.”**

# TRANS-DISCIPLINARY NATURE

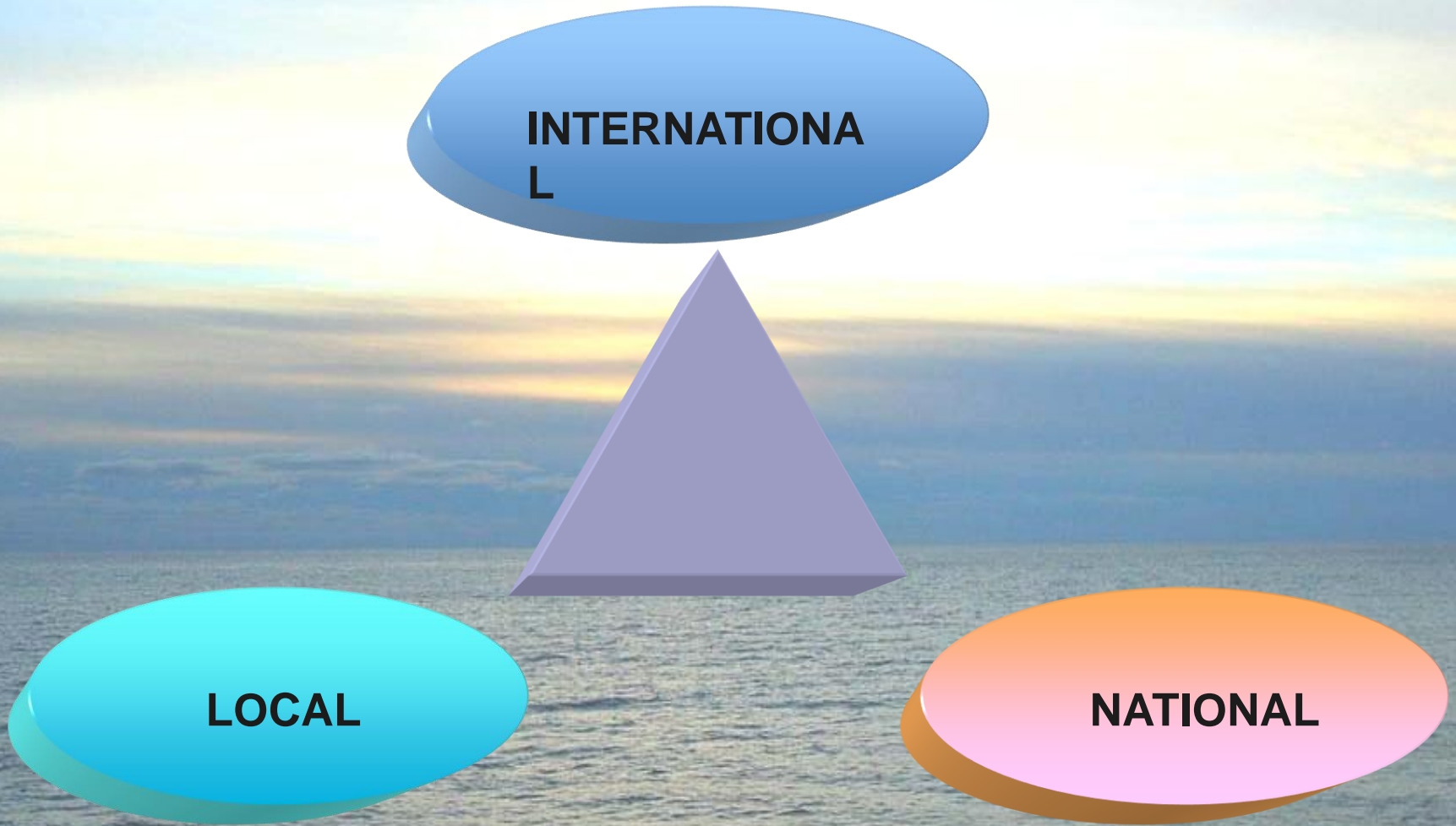


# SYSTEMS OF LAW

- COMMON LAW
- CIVIL LAW
- SHARIA LAW
- SOCIALIST LAW
- INDIGENOUS LAW

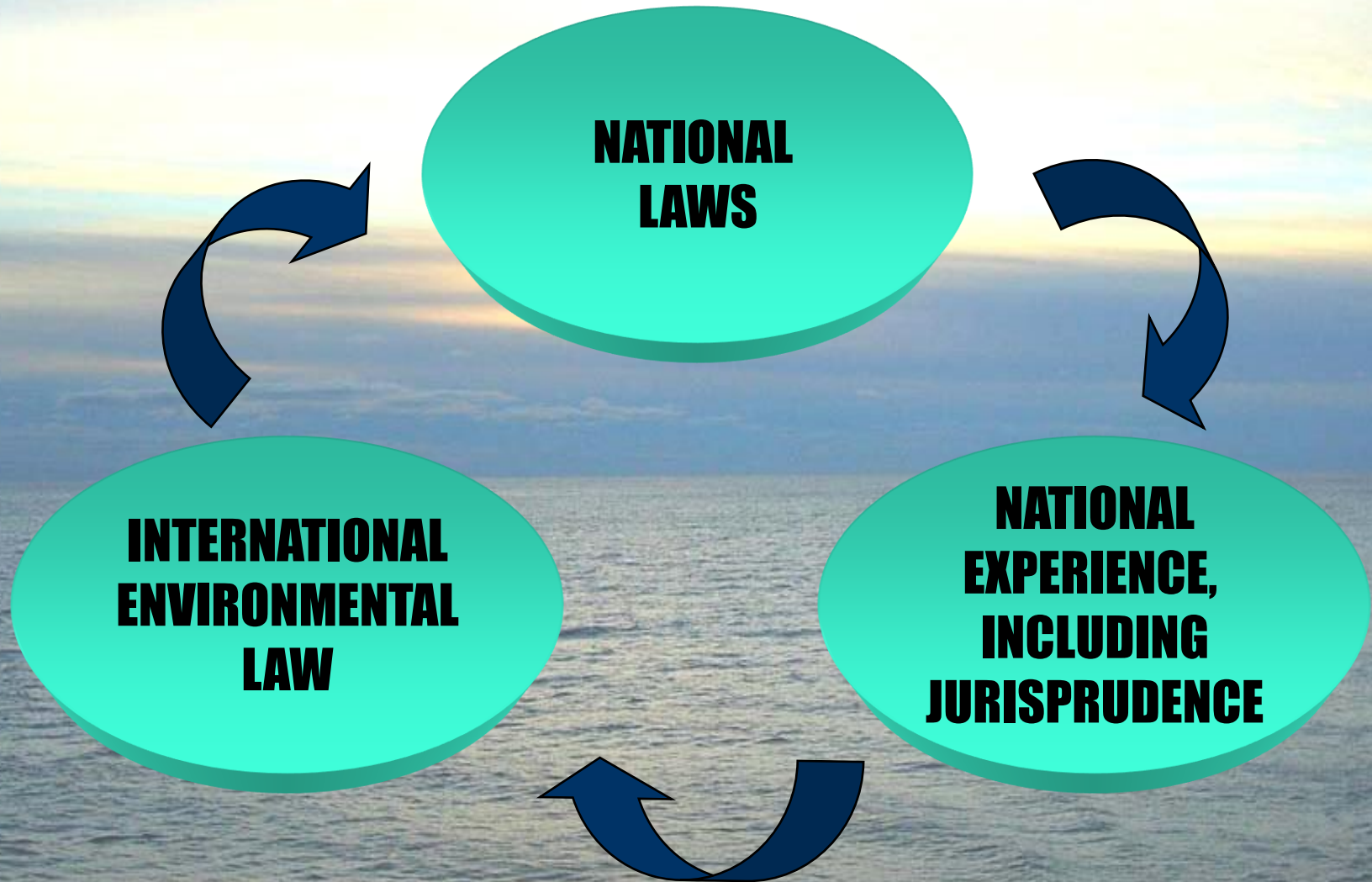
- DEFINITIONS OF ENVIRONMENT •
- ENVIRONMENTAL INSTITUTIONS •
- JURISDICTIONAL ISSUES •
- ENFORCEMENT PROCESSES •
- COURT ORDERS AND REMEDIES •
- COURT SYSTEMS •

# SOURCES OF ENVIRONMENTAL LAW

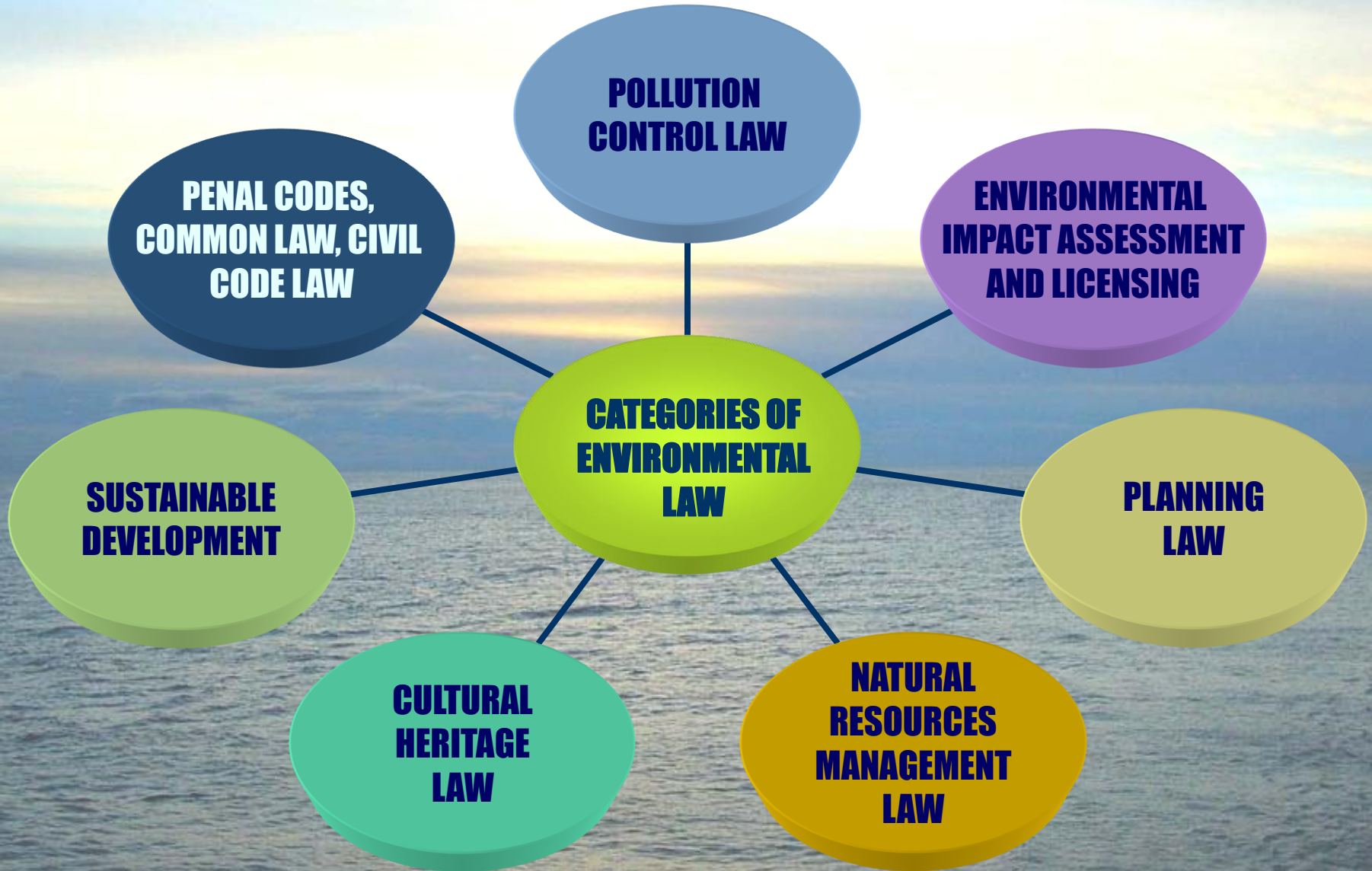




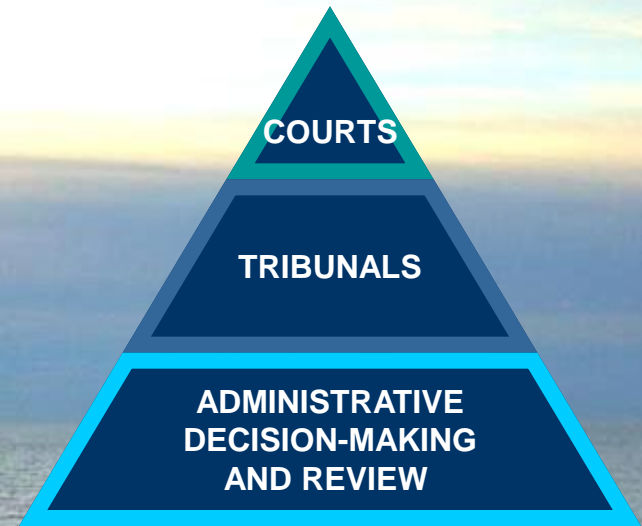
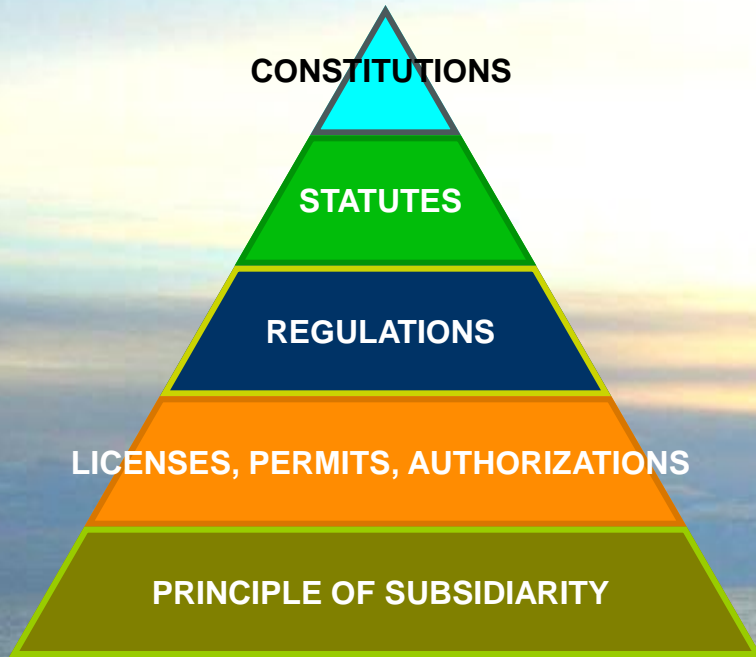
# THE EVOLUTION OF ENVIRONMENTAL LAW



# ENVIRONMENTAL LAW AT THE NATIONAL LEVEL



# LEGAL HIERARCHIES IN THE ENVIRONMENTAL CONTEXT



# ENVIRONMENTAL LAW AT THE INTERNATIONAL LEVEL

Types of international law, generally:

Multi-lateral  
Agreements  
(MEAs)

Decisions by  
International  
Tribunals

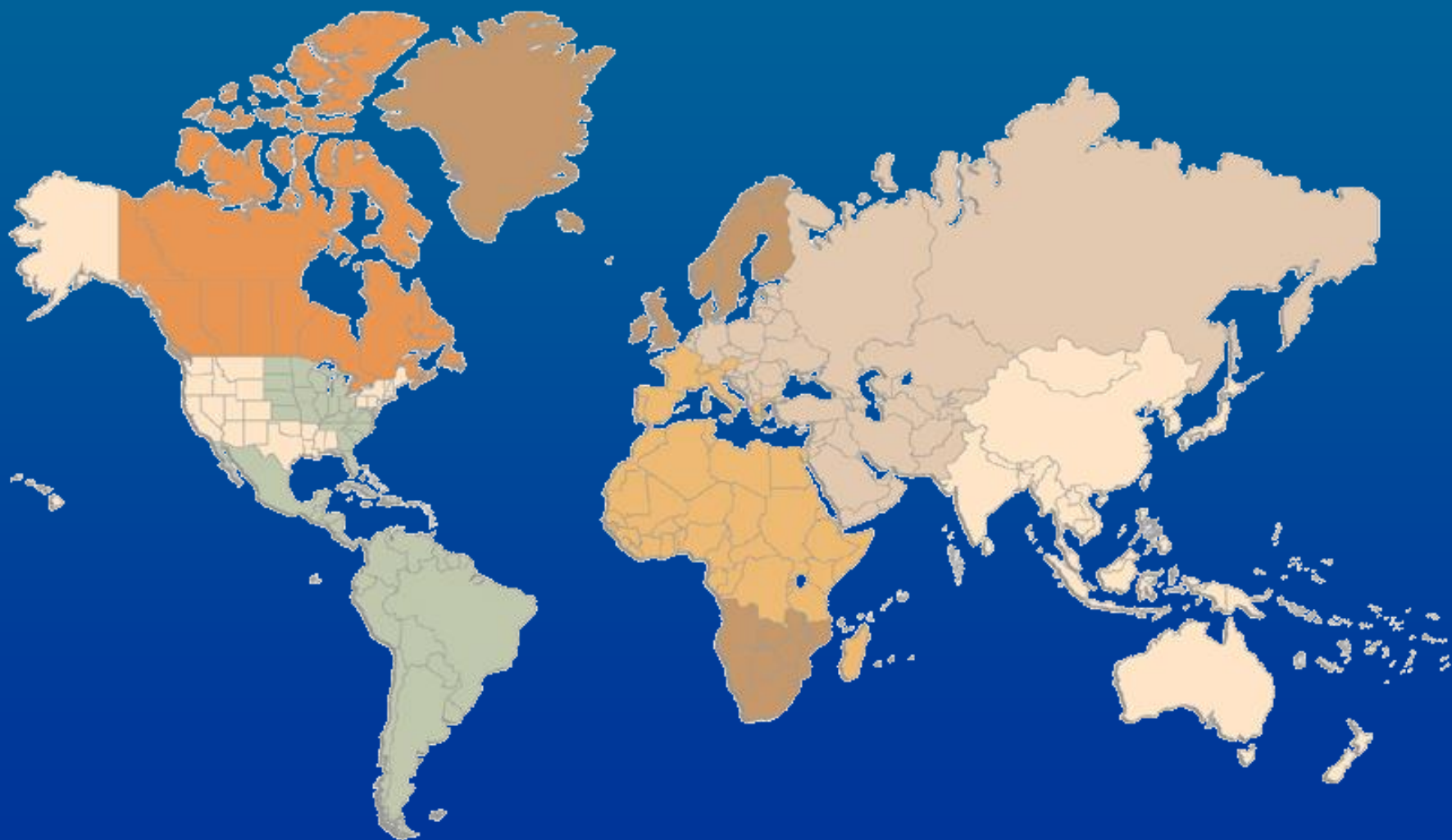
“Customary”  
international law

Generally addresses State-to-State obligations

# QUESTIONS REGARDING IMPACT OF INTERNATIONAL LAW AT THE NATIONAL LEVEL

- Has international law been incorporated into national law?
- If so, is it enforceable in a practical sense?
- What law prevails in the event the incorporated international law is in conflict with another provision of national law?
- If the international concept or principle is not binding, does it nonetheless serve as a source of persuasive authority?

# SOME KEY MULTI-LATERAL ENVIRONMENTAL AGREEMENTS



# Rotterdam

1998 ROTTERDAM CONVENTION ON THE  
PRIOR INFORMED CONSENT PROCEDURE  
FOR CERTAIN HAZARDOUS CHEMICALS  
AND PESTICIDES IN INTERNATIONAL TRADE



# Stockholm

## 2001 STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POPs)





# Lusaka

1994 LUSAKA AGREEMENT ON CO-OPERATIVE ENFORCEMENT OPERATIONS DIRECTED AT ILLEGAL TRADE IN WILD FAUNA AND FLORA



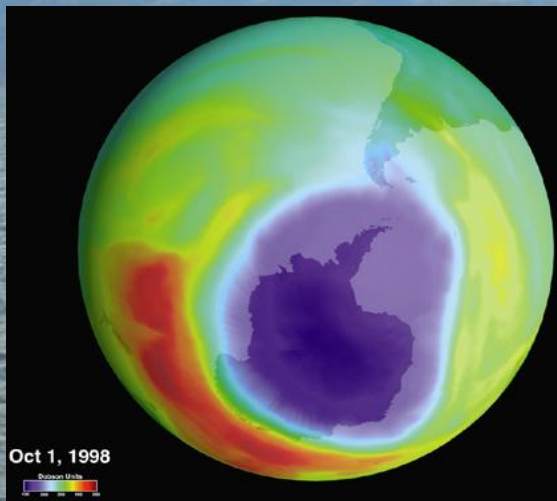
# Basel

## 1989 BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL



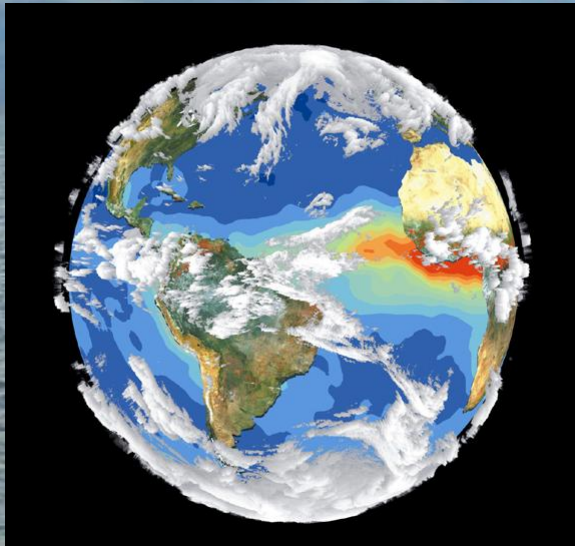
# Montreal

1985 VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER AND ITS 1987 MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER



# Bonn

## 1992 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE AND ITS 1997 KYOTO PROTOCOL



# Rio de Janeiro

## 1992 CONVENTION ON BIOLOGICAL DIVERSITY

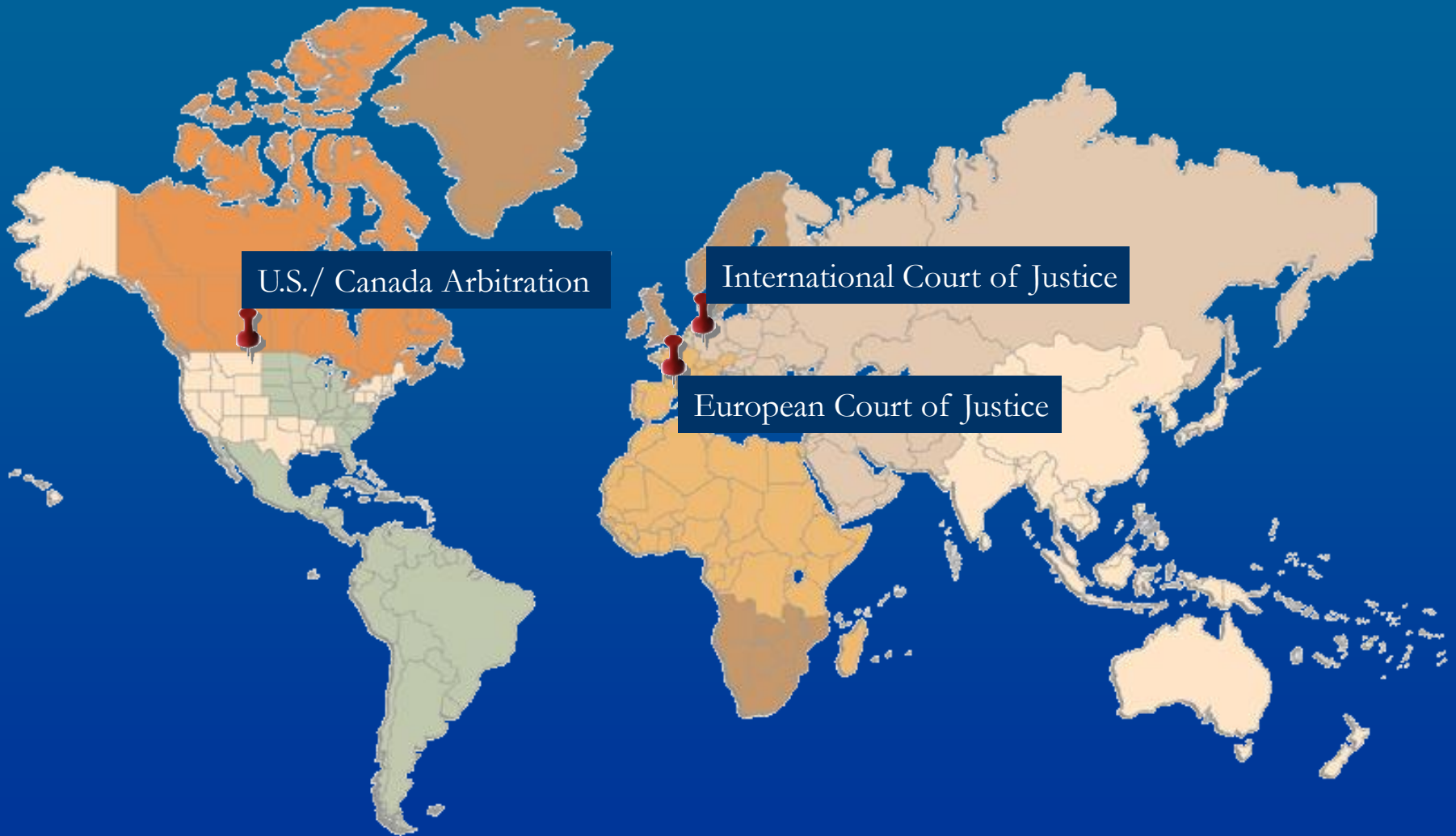


# IMPACT OF MEAs ON NATIONAL LAW

Monist and dualist approaches

Key Question:  
Have elements of the MEA become  
part of the corpus of domestic law?

# RULINGS OF INTERNATIONAL COURTS AND TRIBUNALS



U.S./ Canada Arbitration

International Court of Justice

European Court of Justice

# CUSTOMARY INTERNATIONAL LAW

- A difficult area – when does a principle become a “general practice of law”?
- Binding versus persuasive force



# CONCLUSIONS

**ENVIRONMENT IS NOT A SECTOR BUT A DIMENSION OF EVERY SECTOR**

**ENVIRONMENTAL LAW IS INHERENTLY TRANSDISCIPLINARY**

**WHILE THERE ARE COMMONALITIES, ENVIRONMENTAL LAW MUST BE SEEN WITHIN THE BROADER SYSTEM OF LAW OF WHICH IT IS PART**

**COMPARISONS OF ENVIRONMENTAL OUTCOMES UNDER DIFFERENT LEGAL SYSTEMS CAN BE INSTRUCTIVE**

**DEPENDING ON THE JURISDICTION, AWARENES OF BOTH NATIONAL AND INTERNATIONAL ENVIRONMENTAL LAW MAY BE IMPORTANT**